IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8969 of 2007
With
SPECIAL CIVIL APPLICATION No. 8088 of 2007
With
SPECIAL CIVIL APPLICATION No. 14230 of 2007
With
SPECIAL CIVIL APPLICATION No. 14232 of 2007
To
SPECIAL CIVIL APPLICATION No. 14247 of 2007
With
SPECIAL CIVIL APPLICATION No. 14248 of 2007
With
SPECIAL CIVIL APPLICATION No. 14249 of 2007
To
SPECIAL CIVIL APPLICATION No. 14254 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ? **YES**
2	To be referred to the Reporter or not ? **YES**
3	Whether their Lordships wish to see the fair copy of the judgment ? **NO**
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **NO**
5	Whether it is to be circulated to the civil judge? **NO**

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GANPATBHAI HEMAJI & OTHERS & 6 - Petitioner(s)
Versus
AHMEDABAD MUNICIPAL CORPORATION - Respondent(s)

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Appearance :
MR MALKAN with MS JOLLY R PARIKH for Petitioner(s) : 1 - 7.
NOTICE SERVED BY DS for Respondent(s) : 1,
MR RM CHHAYA for Respondent(s) : 1,
MR SN SHELAT with MR MG NAGARKAR for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 10/10/2007
COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

All these petitions challenge the eviction notices dated 11.12.2006 issued by the respondent – Ahmedabad Municipal Corporation and also pray for a direction to the Corporation to regularize the petitioners' dwellings on the land known as Siddhi Camp in Maninagar, Ahmedabad. The petitioners have also prayed for the alternative relief of directing the Corporation to provide alternative accommodation to the petitioners.

2. Although the petitioners, 49 in number, have prayed for the same relief and the broad facts of the case are similar, the petitioners may be divided into two categories :-

(1) Seven petitioners of Special Civil Application No.8969 of 2007 were initially residing in the area called Uttamnagar in Ahmedabad. The petitioners' dwellings were situated on the parcel of land which was required by the respondent Corporation for laying down the

drainage line and therefore, the petitioners were given alternative accommodation on a portion of land being Final Plot No.68 in Maninagar, Ahmedabad. The petitioners put up their dwellings and have been residing therein since 1979.

(2) The rest of the petitioners claim that they have been occupying a portion of land being Final Plot No.68 in Town Planning Scheme No.4 for the last about 40 to 50 years. According to the petitioners, they were inducted as tenants by the owner of the land and after the land vested into the respondent Corporation under the Town Planning Scheme, the petitioners became tenants of the respondent Corporation and the respondent Corporation was collecting rent from the petitioners.

3. The eviction notices dated 11.12.2006 issued by the respondent Corporation are impugned in these petitions. Mr. Malkan with Ms. Jolly Parikh, learned advocate for the petitioners have pressed the following contentions :-

(i) The impugned notices are issued in violation of principles of natural justice and are issued contrary to the law laid down by the Apex Court in Olga Tellis Vs. Bombay Municipal Corporation, AIR 1986 Supreme Court 180 and M/s. Babubhai & Co. and others Vs. State of Gujarat and others in (1985) 2 SCC 732. Though styled as notices, the impugned communications do not give any opportunity to the petitioners to show cause, but simply require the petitioners to vacate the land in question.

(ii) The petitioners are/were interested persons in Final Plot No.68 and are/were adversely affected by the reservation of the land in question for the purposes of park and recreation. The respondent Corporation was, therefore, bound to serve the petitioners with special notices under the provisions of Rule 21(3) of the Bombay Town Planning Rules, 1955. In absence of such special notices, the decision to reserve Final Plot No.68 for the purposes of park and recreation was illegal.

In support of this submission, Mr. Malkan has relied on the decision of this Court in the case of Mohanlal Jesingbhai Vs. P.J. Patel (1970) 11 GLR 1035.

Although seven petitioners of Special Civil Application No.8969 of 2007 admittedly shifted to Final Plot No.68 in the year 1979, all the petitioners have taken a common plea that in Town Planning Scheme No.4, Maninagar, Ahmedabad, South Zone, the Ahmedabad Municipal Corporation reserved Final Plot No.68 for “Park and Recreation” in the Town Planning Scheme sanctioned in 1969 without serving any special notice under the provisions of Rule 21(3) of the Bombay Town Planning Rules, 1955.

(iii) The petitioners have been occupying the land in question for the last about 40 to 50 years. The petitioners have constructed buildings on the land in question. The petitioners were not rank trespassers who encroached upon the land in question, but the petitioners were

lawfully inducted tenants initially by the then owner of the original plot and subsequently accepted as tenants by the respondent Corporation itself. The alternative lands being offered to the petitioners cannot thereof be of the same area with the same facilities as are offered to the trespassers and encroachers on public lands.

4. On the other hand, Mr. S.N. Shelat with Mr. Nagarkar, learned counsel of the respondent Ahmedabad Municipal Corporation have opposed the petitions and made the following submissions :-

(i) The petitions suffer from gross delay, latches and acquiescence in so far as reservation of the land in question for park and recreation made in the Town Planning Scheme in the year 1969-70 is sought to be challenged in the petitions filed in the year 2007.

(ii) The present petitioners have no better or higher case than the petitioners in another group of petitions being Special Civil Application No.26951 of 2006 and cognate matters, which have been recently disposed of by another Division Bench by order dated 08.05.2007. The petitioners herein, therefore, cannot get any relief other than the reliefs granted to those petitioners.

In fact the present petitions came to be filed after the respondent Corporation pointed out in the group of petitions with Special Civil Application No.26951 of 2006 that many of the persons shown as the petitioners in that group were actually dead persons and therefore, such

petitions were not maintainable. The names of the persons who were shown as petitioners and whose names were objected to were accordingly deleted with the permission of this Court and therefore, the only distinction between the present petitioners and those in the petitions disposed of on 08.05.2007 is that the present petitions were filed later on.

(iii) The petitioners do not have any lawful title to the land in question. Town Planning Scheme No.4 was sanctioned as far back as on 04.11.1969 and has came into force on 01.01.1970. Upon reservation of Final Plot No.68 for the purposes of park and recreation of the said plots, the Corporation took over the possession of the land on 20.03.1974. The owners of the original plot who were given Final Plot No.68, were not alloted any other land under the said Town Planning Scheme, but were paid compensation and therefore, even assuming that the petitioners were occupying the land in question prior to framing of the Town Planning Scheme, the petitioners do not have any right to make any claim against the Corporation.

5. Although, it is the case of the petitioners that 42 petitioners (i.e. other than the petitioners of Special Civil Application No.8969 of 2007) were occupying the land in question prior to sanctioning the scheme in the year 1969, the petitioners have not produced any document indicating that the petitioners' names were reflected in the record of the respondent Corporation or in any other public record as occupants of the land. The documents containing the names

of some of the petitioners are of subsequent period. In fact all the tax bills, tax receipts and such other documents issued by the respondent Corporation or public authorities were issued after the Corporation took over possession of the land in the year 1974. In this view of the matter, we are not in a position to accept the petitioners' contention that the petitioners were entitled to be served with the special notices under Rule 21(3) of the Bombay Town Planning Rules, 1955.

6. We may deal with the submission made by the learned counsel for the petitioners that since the petitioners' names are shown in the tax bills/tax receipts issued by the Corporation after 1974, and since the petitioners have produced some tax bills issued by the respondent Corporation in 1960 in respect of the plot of land owned by the erstwhile owners, such post – 1974 tax bills/tax receipts should relate back to the period prior to framing of the Town Planning Scheme. It is also submitted that the tax bills issued by the Corporation in the year 1960 indicate the names of the erstwhile owners i.e. Natwarlal Keshavlal and others and those bills indicated that they were tenants on the land in question and therefore, it was the duty of the respondent Corporation while framing the Town Planning Scheme to make on the spot survey of the dwellings on the land in question and thereafter, to serve the special notices under Rule 21(3) of the Bombay Town Planning Rules, 1955.

7. Apropos the above submission, Mr. Shelat for the respondent Corporation has pointed out from the affidavit-in-reply filed by the Deputy Municipal Commissioner, South

Zone, Ahmedabad Municipal Corporation that on the lands which were subsequently reconstituted as Final Plot No.68, there were a large number of occupants in two different camps – Machhipir camp and Siddhi camp. When the Corporation took over the possession of the land in the year 1974, there were 245 occupants in Machhipir camp and 139 occupants in Sindhi camp. However, at present the number of dwellers have increased to 585 in Machhipir camp and 273 in Siddhi camp. It is, therefore, submitted that merely because the petitioners may be presently occupying any portion of Final Plot No.68, it does not necessarily mean that the petitioners were also occupying the portion of the same land at the time of preparation of the Town Planning Scheme in 1960s.

8. The learned counsel for the respondent Corporation has further submitted that at present Kankaria lake front is a major thoroughfare for traffic moving in various directions and it connects several areas of the city with Maninagar, Raipur, Kalupur, Khokhra, Behrampura, and Shah-E-Alam areas. The heavy flow of traffic at all times creates a barrier between the existing public places along the lake and the lake edge. Hence, the Corporation has prepared the project called Kankaria Lake Front Development Project as a part of the development of Ahmedabad as a mega city. The project intends to create a positive link between the existing facilities and the lack front by making the complete edge accessible to pedestrians, bicyclists and emergency vehicles. The project intends to continue the existing linkages through alternative route. There is an existing peripheral road around most parts of the lake front which can potentially work as this alternative

route for all the areas. In order to complete this ring, it would be crucial for smooth functioning of the project and the easy flow of traffic in the surrounding areas. The project would cover pedestrian zone which would include plazas near entrance to the existing facilities, large green open spaces and various recreational facilities. The project would, thus, solve the traffic problem on the circular road at Kankaria lake and will also provide recreational facilities and facilities for pedestrians also. The Corporation also intends to lay down 24.38 mts. (80 ft.) road. Thus, the Final Plot No.68 is to be utilized for laying down a public street with greater width and also for providing amenities like parking to the residents of the city.

9. It is further stated by Mr. Shelat for the Corporation that before evicting the petitioners, the Corporation has already resolved to provide alternative facilities to the petitioners by allotting them parcels of land in Survey Nos.351 and 352 at Piplaj within the limits of Ahmedabad Municipal Corporation. Apart from providing such parcels of land, the Corporation will also provide the infrastructure facilities like water supply, drainage connection and community toilets.

It is also submitted that in any view of the matter, while allotting parcels of land in Piplaj, the Corporation has made allotment in such a manner that the petitioners would be separately treated and would be offered plots in one group. The plots to be alloted to them are adjacent to open space admeasuring 4021 sq. mtrs. and abutting 9 mtrs. approach road. It is, therefore, submitted that the petitioners have no right to make any grievance against the alternative

accommodation being provided for them.

10. Mr. Shelat has last submitted that since the petitioners do not have any title to the land and the land in question is vested in the Municipal Corporation under the Town Planning scheme for the specific purpose of park and creation, the petitioners cannot be treated as lawful occupants of the land in question and therefore, they cannot claim any better or higher treatment than the other occupants of the land in Final Plot No.68.

11. Having heard the learned counsel for the parties, we find considerable force in the submissions made on behalf of the Corporation that what the petitioners are seeking to do in the present petitions is challenging the reservation of Final Plot No.68 for park and recreation made in the Town Planning Scheme No.4 which was sanctioned as far back as on 04.11.1969 and which came into force on 01.01.1970. Apart from such gross delay in filing these petitions, the petitioners have not been in a position to show any lawful title to the land in question for the period prior to the date of sanctioning the same. Merely because, the petitioners are presently occupying a portion of Final Plot No.68 and the petitioners have produced some tax bills/tax receipts issued by the Corporation acknowledging the possession of the petitioners' offer for dwelling units on a portion of Final Plot No.68, issuance of such tax bills/receipts after 1974 does not mean that the petitioners were occupying such dwellings on the land in question prior to 1969. As pointed out in paragraph 2(ii) of the reply affidavit filed on behalf of the Corporation, the number of occupants in the Sindhi campus has swelled from

139 in 1974 to 273 in 2007. Admittedly, the petitioners have not been able to show any public record with their names during the period prior to sanction of the scheme in the year 1969 reflecting the petitioners' names as occupants of the dwelling units on the land which is reconstituted as Final Plot No.68. It is not possible to accept Mr. Malkan's contention that reference to tax bills issued by the Corporation in the year 1960 to the erstwhile owner of the land being Natwarlal Keshavlal and others and mention of the word “tenants” in such tax bills should suffice for holding that the persons in whose favour rent receipts were issued by the Corporation after 1974 were the same persons who were occupying the land in question as tenants of the erstwhile owners prior to 1969. Even if it were so, the Corporation could not be expected to serve special notices under Rule 21(3) of the Bombay Town Planning Rules, 1955 to any such person whose name did not figure on the record of the Municipal Corporation at the relevant time i.e. prior to sanction of the scheme in 1969.

12. In any view of the matter, the fact that the Corporation has evolved the scheme for offering alternative accommodation to the persons who were occupying such lands prior to 01.05.1976 for residential purposes is a very relevant fact. Of course, Mr. Malkan for the petitioners has made a grievance that the parcels of the land being offered to the petitioners is of the same area and with the same facilities as are offered to the persons who were encroached upon the Corporation land prior to 01.05.1976. It is submitted that the petitioners cannot be equated with such encroachers.

13. Since the petitioners have not produced any evidence to show that the petitioners themselves were lawfully inducted into the land in question prior to the Corporation took over the possession of the land in the year 1974, it is not possible to accept the petitioners' contention that they are on a better footing than the others who had occupied the Corporation land prior to 01.05.1976. The fact remains that upon coming into force of the Town Planning Scheme with effect from 01.01.1970 under which Final Plot No.68 has been reserved for park and recreation and the said plot has vested in the Corporation, all the alleged rights of the occupants on the Final Plot came to an end and therefore, the petitioners have no title to continue to possess the land in question.

14. Apart from the aforesaid aspect, we may also note that it is the specific case of the respondent Municipal Corporation that after the allotment of parcels of land in Piplaj along with the facilities like water supply, street lights, mobile health services, transport services, etc., under Jawaharlal Nehru National Urban Renewal Mission (JNNURN), the Corporation is going to build as many as 20,000 residential units each having built up area of 35 sq. mtrs. (i.e. two rooms and a kitchen). As and when the said JNNURN project is through, the allottees in Piplaj will be extended by the respondent Corporation the benefits of the said scheme on priority basis. The cost of the house under the said project will be approximately Rs.1.65 lacs, out of which 50% cost will be borne by the Central Government, 20% cost will be borne by the State Government, 12% (10% in case of SC/ST) will be borne by the beneficiary and the remaining cost will be borne by the Municipal Corporation. The beneficiary will be

permitted to pay his share of the cost in 36 installments.

We may also note the stand of the Corporation that the petitioners who accept such alternative offer will also be given cash amount of Rs.5,000/- and a period of one month to shift their belongings from the dwellings unit presently occupied to the site where the petitioners may put up construction on the land allotted to them in Piplaj.

15. We, therefore, find that the offer of the alternative accommodation to the petitioners in Piplaj by giving them land admeasuring 15 ft. X 10 sq. ft. excluding the area for toilet facilities is meant only to be a temporary arrangement till the Corporation builds residential units (each block having two rooms and a kitchen) which will be supplied to such allottees at highly subsidized rates and the subsidy will be to the extent of 88% to 90%. The present temporary offer of alternative accommodation has, therefore, to be seen in the above perspective.

16. Before parting, we deal with the following judgments cited and relied upon by Mr. Malkan in support of his submissions.

17. The decision of Olga Tellis, AIR 1986 SC 180 on which heavy reliance was placed by Mr. Malkan would not render much assistance to it, as in Para 51 of the said decision, the Hon'ble Supreme Court has observed that “normally, we would have directed the Municipal Commissioner to afford an opportunity to the petitioners to show why the encroachments committed by them on pavements or footpath should be

removed. But, the opportunity which was denied by the Commissioner was granted by us in an ample measure, both sides having made their contentions elaborately on facts as well as on law. Having considered those contentions, we are of the opinion that the Commissioner was justified in directing the removal of the encroachments committed by the petitioners on pavements, footpaths or accessory roads." Similarly, in the present case even if it is accepted that the petitioners were not given any opportunity for their removal from the disputed site or for demolition of their houses, the notices issued by the Corporation were stayed by this Court and we have elaborately heard the petitioners and considered their submissions in great detail. After considering the facts of the case, relevant case law on the subject and the statutory provisions, we have come to the conclusion that the respondent Corporation is fully justified in issuing the impugned notices. While not accepting the petitioners' challenge to the impugned notices, we have directed the respondent Corporation to make allotment of the alternative accommodation in the form of plot/s to the petitioners and we have further directed the respondent Corporation not to remove the petitioners from the present place till 30.11.2007. This direction is in consonance with the direction issued by the Hon'ble Supreme Court in the case of Olga Tellis (supra). As in that case also, the respondent Corporation was directed not to evict the petitioners from the pavements, footpath or accessory roads until one month after the conclusion of the monsoon season.

18. In M/s. Babubhai & Co. and others, (1985) 2 SCC 732, the Hon'ble Supreme Court has held that the power conferred

upon the local authority is a quasi-judicial power which implies that the same has to be exercised after observing the principles of natural justice, that is to say, the decision that the occupants are not entitled to occupy the plots in their occupation has to be arrived at after hearing such occupants and that too by passing a speaking order which implies giving of reasons and that ensures the application of mind to only germane or relevant material on record eschewing extraneous and irrelevant. Moreover, any order of summary eviction or any extraneous non-germane irrelevant or malafide considerations would be subject to the writ jurisdiction of the Court. Based on these observations, Mr. Malkan has submitted before us that no opportunity was given before directing the petitioners' removal from the place where they are residing at present and hence, such directions are contrary to law laid down by the Hon'ble Supreme Court. With respect, there is no substance in these submissions as the Town Planning Scheme was finalised way back in the year 1967 and the Corporation has taken the possession of the land on 20.03.1974. Before finalisation of the scheme, all statutory requirements have been fulfilled and public notices have been issued. Even before us, ample opportunities have been granted to the petitioners to justify their occupation on the disputed land. Even otherwise, alternative site has been offered to them and reasonable time is given to them to vacate the premises.

19. As regards the decision of this Court in Mohanlal Jesingbhai, (1970) 11 GLR 1035, there is no evidence to show that the petitioners were occupying the premises when the

Corporation took possession of the land in the year 1974. Hence, the petitioners cannot be said to be “the persons interested” within the meaning of Rules 21(3) and 21(4) of the Rules. In Jashwantsingh Mathurasingh Vs. Ahmedabad Municipal Corporation, AIR 1991 SC 2130, the Hon'ble Supreme Court has held that a tenement or a sub-tenant in possession of a tenant in the Town Planning Scheme is a person interested within the meaning of Rules 21(3) and 21(4) of the Rules. But he must be in possession of the property on the crucial date i.e. when the Town Planning Scheme is notified in the Official Gazette. Every owner or tenant or a sub-tenant in possession on that date alone shall be entitled to a notice and opportunity. These principles have been reiterated by the Hon'ble Supreme Court in the later decision in Municipal Corporation Vs. Chelaram & Sons and another, (1996) 11 SCC 127, wherein it is held that a special notice under Rules 21(3) of the Rules framed under the Act will be required to be served only on those persons either owners or tenants or sub-tenants who were in possession of the property concerned on the date on which Town Planing Scheme was introduced in Official Gazette and not to others who might have come on the same later on.

20. In view of these decisions, we are of the view that the special notice under Rule 21(3) of the Bombay Town Planning Rules, 1955 is not required as the petitioners were not in possession of the property on the date of sanctioning of the Town Planning Scheme or when the scheme was introduced in the Official Gazette.

21. In view of the above discussion, we do not find any merit

in any of the contentions urged on behalf of the petitioners. While dismissing the petitions, following the direction given by another Division Bench of this Court in the order dated 08.05.2007 in Special Civil Application No.26951 of 2006 and connected matters, we direct that in case after allotment of the alternative accommodation in the form of plot/s to the petitioners, if they do not vacate the present place even after allotment of the alternative plots, it will be open to the respondent Corporation to remove the petitioners from the present site after one month from the date of allotment and possession of the alternative accommodation is offered to them. In case any allottee does not take possession of the alternative plot, the period of one month shall be counted from the date of allotment of the plot for removal of the petitioners from the present place. In any case, the petitioners shall not be evicted from the present place till 30.11.2007.

[M.S.SHAH, J.]

[K.A.PUJ, J.]

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